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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Edward A. Hubbard

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EXAMINER

DALENCOURT, YVES

ART UNIT

PAPER NUMBER

2457

NOTIFICATION DATE

DELIVERY MODE

06/24/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptocorrespondence@sbmc-law.com

<b>Office Action Summary</b>	<b>Application No.</b> 09/834,785	<b>Applicant(s)</b> HUBBARD, EDWARD A.	
	<b>Examiner</b> YVES DALENCOURT	<b>Art Unit</b> 2457	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 29-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/29/2010; 3/31/2010</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This office action is responsive to amendment filed on 03/29/2010.

#### ***Response to Amendment***

The Examiner has acknowledged the amended claims 29 – 35, 37, 39 – 43, 48, 50, 55, 57 - 58, 60 - 63, and 65.

#### ***Response to Arguments***

Applicant's arguments filed on 03/29/2010 have been fully considered but they are not persuasive.

Regarding Applicant's argument (pages 12 – 13), that in order for a prima facie case of anticipation to be proper under 35 U.S.C. § 102(e) the cited document must have been filed before the effective filing date of the application under examination. In the present case, the Hartsell document has an actual filing date of June 12, 2001 which is after the actual filing date of this Application, April 13, 2001. Further, Applicant respectfully notes that Hartsell is a continuation-in-part application of U.S. Patent Application Serial Number 09/797,200 which was filed on March 1, 2001. Thus, Hartsell may include new matter that was not present in the 09/797,200 Application.

In addition, while the cross-reference portion of the Hartsell document does claim priority to several U.S. Provisional Patent Applications within the March 2000 to May 2001 timeframe, Applicant respectfully notes that this Application claims priority to, and

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incorporates by reference in their entirety, several U.S. Patent Applications which predate the priority documents on which the Hartsell document relies.

The Examiner respectfully disagrees with Applicant's assertion because Hartsell has several non-provisional of provisional applications, which one of them (US 60/187,211) is filed on **March 3, 2000** before any of U.S Patent Applications that the instant Application claims priority. Thus, the Hartsell's reference is still applied to the claimed limitations.

### ***Claim Objections***

Claim 40 is objected to because of the following informalities: It is suggested to delete --- 38, --- (line 2). Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 29 – 65 are rejected under 35 U.S.C. 102(e) as being anticipated by Hartsell et al (US 20020065864; hereinafter Hartsell).

Regarding claim 29, Hartsell discloses a computer-implemented method providing network attached storage (NAS) services (fig. 2) comprising:

configuring a distributed processing system by coupling of a plurality of distributed devices coupled to a network, wherein the distributed device include respective client agents configured to process respective portions of a workload for the distributed processing system (paragraphs [0189], [0204], [0236], and [0245], lines 1 - 8), wherein the client agents for particular said distributed devices have corresponding software-based network attached storage (NAS) components configured to assess unused or under-utilized storage resources in selected distributed devices of the plurality of distributed devices (paragraphs [0190], [0208], and [0245], lines 8 - 15);

representing with the software-based NAS component that the selected distributed devices respectively comprise NAS devices having an available amount of storage resources related to the unused and under-utilized storage resources for the selected distributed devices (paragraphs [0197], [0210], and [0245 – 0246]); and

processing one or more of data storage or access workloads for the distributed processing system by accessing data from or storing data to at least a portion of the available amount of storage resources to provide NAS service to a client device coupled to the network (paragraphs [0210 – 0211]). Claim 42 adds the limitation of allocating respective available amount of unused storage resources in selected distributed devices of the plurality of distributed devices (paragraphs [0012], [0097], [0181], and [0262].

Regarding claim 30, Hartsell discloses the method of claim 29, further comprising enabling at least one of the selected distributed devices to function as a stand-alone

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dedicated NAS device through use of the client agent for the particular said distributed device (paragraph [0213]).

Regarding claim 31, Hartsell discloses the method of claim 29, further comprising enabling at least one of the selected distributed devices to function as a location distributed device to store location information associated with data stored by the selected distributed devices through use of the client agent for the particular said distributed device (paragraph [0213]).

Regarding claim 32, Hartsell discloses the method of claim 31, further comprising receiving an access request from the client device and directing the client device to data requested on at least one of the selected distributed devices (paragraphs [0214] and [0219]).

Regarding claim 33, Hartsell discloses the method of claim 32, further comprising managing the NAS service for said distributed devices at least in part utilizing a centralized server (paragraphs [0215] and [0219]).

Regarding claim 34, Hartsell discloses the method of claim 33, further comprising downloading the software-based NAS component to the selected distributed devices( paragraphs [0068], [0100], [0286], and [0324]).

Regarding claim 35, Hartsell discloses the method of claim 33, further comprising storing, with the centralized server, location information associated with the data stored in the selected distributed devices (paragraphs [0088 - 0089], and [0116]).

Regarding claim 36, Hartsell discloses the method of claim 35, further comprising utilizing the centralized server to receive and route the data for storage to the selected

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distributed devices based upon individual capabilities of the selected distributed devices indicated in a capabilities database (paragraphs [0089] and [0116]).

Regarding claim 37, Hartsell discloses the method of claim 29, wherein the method is at least partially performed through use of the Internet (paragraphs [0005] and [0174]).

Regarding claim 38, Hartsell discloses the method of claim 29, further comprising managing storage resources for the selected distributed devices with a storage priority control that facilitates use of the available amount of storage resources for the selected distributed devices (paragraphs [0233], [0247], and [0302]).

Regarding claim 39, Hartsell discloses the method of claim 38, further comprising accepting selection of the storage priority control, by the client device, that comprises a parameter (paragraphs [0124] and [0229]).

Regarding claim 40, Hartsell discloses the method of claim 39, further comprising prioritizing one or more of storage or deletion of data using the storage priority control that comprises storage priority level schemes (paragraphs [0233], [0247], and [0302]).

Regarding claim 41, Hartsell discloses the method of claim 38, wherein the managing storage resources further comprises marking directly data or files (paragraphs [0233], [0247 - 0248], [0302], and [0321]).

Claims 42 – 65 substantially disclose all the limitations of claims 29 – 41 in system and computer-implemented method with minor modification in the claimed

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language. The reasons for rejecting claims 29 – 41 apply in claims 42 – 65. Therefore, claims 42 – 65 are rejected for the same reasons.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

### **Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **YVES DALENCOURT** whose telephone number is (571)272-3998. The examiner can normally be reached on M-F 8-5:30.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/YVES DALENCOURT/  
Primary Examiner, Art Unit 2457